

Agency for International Development

this section will be forwarded to the Bureau for Food for Peace and Voluntary Assistance within 30 days for inclusion in the registry.

§ 203.9 Access to records.

All records, reports, and other documents which are made available to A.I.D. pursuant to this part shall be made available for public inspection and copying pursuant to and under the procedures established by the public information regulation (22 CFR part 212) of the Agency for International Development.

§ 203.10 Waiver authority.

The Administrator of the Agency for International Development or his/her designee may waive, withdraw, or amend from time to time, any or all of the provisions of the regulations in this part.

PART 204—HOUSING GUARANTY STANDARD TERMS AND CONDITIONS

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EXHIBIT A TO PART 204—APPLICATION FOR COMPENSATION

EXHIBIT B TO PART 204—ASSIGNMENT

AUTHORITY: 22 U.S.C. 2381.

SOURCE: 53 FR 33805, Sept. 1, 1988, unless otherwise noted.

Subpart A—Definitions

§ 204.1 Definitions.

Wherever used in these standard terms and conditions:

(a) *A.I.D.* means the United States Agency for International Development or its successor with respect to the housing guaranty authorities contained in title III, chapter 2 of part I of the Foreign Assistance Act of 1961, as amended (the “Act”).

(b) *Eligible Note(s)* means (a) Note(s) meeting the eligibility criteria set out in § 204.12 hereof.

(c) *Eligible Investor* means an “eligible investor” as defined in section 238(c) of the Act.

(d) *Lender* means an Eligible Investor who initially provides loan funds to the Borrower in exchange for Eligible Note(s).

(e) *Investment* respecting any Eligible Note means the principal amount of such Eligible Note.

(f) *Assignee* means the owner of an Eligible Note who is registered as an Assignee on the Note Register of Eligible Notes required to be maintained by the Paying Agent and who is an “Eligible Investor.”

(g) *Outstanding Investment* respecting any Eligible Note means the Investment less the net amount of any repayments of principal of the Investment made by or on behalf of the Borrower or A.I.D.

(h) *Further Guaranteed Payments* means the amount of any loss suffered by the Lender or by any Assignee by reason of the Borrower’s failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless the Lender and Assignee from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Note in the country of the Borrower.

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(i) *Loss of Investment* respecting any Eligible Note means an amount in Dollars equal to the total of the (1) Outstanding Investment determined as of the Date of Application, (2) Further Guaranteed Payments unpaid as of the Date of Application, and (3) interest accrued at the rate(s) specified in the Note(s) and unpaid on the Outstanding Investment and Further Guaranteed Payments to and including the date on which full payment thereof is made to the Lender or any Assignee.

(j) *Application for Compensation* means an executed application in the form of Exhibit A hereto which the Lender or any Assignee files with A.I.D. pursuant to § 204.21 of this part.

(k) *Applicant* means a Lender or Assignee who files an Application for Compensation with A.I.D.

(l) *Date of Application* means the effective date of an Application for Compensation filed with A.I.D. pursuant to § 204.21 of this part.

(m) *Business Day* means a date on which banks of the District of Columbia of the United States of America are open for business.

(n) *Guaranty Payment Date* means a Business Day not more than sixty (60) calendar days after the related Date of Application; provided that (1) compensation to the party filing the related Application for Compensation is due and payable on such date, in accordance with the terms of this Guaranty and (2) tender of assignment referred to in subsection 204.21(f) is made as therein provided.

[53 FR 33805, Sept. 1, 1988; 53 FR 39015, Oct. 4, 1988]

Subpart B—The Guaranty

§ 204.11 The Guaranty.

Subject to these standard terms and conditions, the United States of America, acting through A.I.D., agrees to pay to any Lender or Assignee who has been determined to be an Eligible Investor compensation in Dollars equal to its Loss of Investment under the Eligible Note; provided, however, that no such payment shall be made for any such loss arising out of fraud or misrepresentation for which such Lender or Assignee is responsible or of which

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it had knowledge at the time it became such Lender or Assignee.

This Guaranty shall apply to each Eligible Note registered on the Note Register required to be maintained by the Paying Agent.

§ 204.12 Guaranty eligibility.

(a) Eligible Notes only may be guaranteed hereunder, and Eligible Investors only are entitled to the benefits of this Guaranty. Notes in order to achieve Eligible Note status must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower; and they must contain a guaranty legend incorporating these standard terms and conditions signed on behalf of A.I.D. by either a manual signature or a facsimile signature or an authorized representative of A.I.D. together with a certificate of authentication manually executed by a Paying Agent whose appointment by the Borrower is consented to by A.I.D. in a Paying and Transfer Agency Agreement.

(b) A.I.D. shall designate in a certificate delivered to the Lender and to the Paying Agent, the person(s) whose signature shall be binding on A.I.D. The certificate of authentication of the Paying Agent issued pursuant to the Paying and Transfer Agency Agreement shall, when manually executed by the Paying Agent, be conclusive evidence binding on A.I.D. that the Note has been duly executed on behalf of the Borrower and delivered.

§ 204.13 Non-impairment of the guaranty.

The full faith and credit of the United States of America is pledged to the performance of this Guaranty. The Guaranty shall not be affected or impaired by any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by the Lender, A.I.D., the Paying Agent or the Borrower in connection with the transactions contemplated by this Guaranty. This non-impairment of the guaranty provision shall not, however, be operative with respect to any amount arising out of fraud or misrepresentation for which the Lender or Assignee is responsible

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or of which it had knowledge prior to the time it became such Lender or Assignee.

§ 204.14 Transferability of guaranty; Note Register.

The Lender of any Assignee may assign, transfer or pledge the Eligible Notes to any Eligible Investor. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Assignee is entered on the Note Register required to be maintained by the Paying Agent pursuant to the Paying and Transfer Agency Agreement. A.I.D. shall be entitled to treat the persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guaranty and A.I.D. shall not be affected by notice to the contrary.

§ 204.15 Paying agent obligations.

Failure of the Paying Agent to perform any of its obligations pursuant to the Paying and Transfer Agency Agreement shall not impair the Investor's or any Assignee's rights under this Contract of Guaranty, but may be the subject of action for damages against the Paying Agent by A.I.D. as a result of such failure or neglect; provided, however, that the Paying Agent is not authorized to issue and authenticate and have Notes outstanding at any time in excess of the principal amount of the Loan.

Subpart C—Procedure for Obtaining Compensation

§ 204.21 Event of default; Application for compensation; Payment.

(a) Within one year after an Event of Default, as this term is defined in an Eligible Note, the Lender or Assignee may file with A.I.D. an Application for Compensation in form as provided in Exhibit A. A.I.D. shall make the required payment not later than sixty (60) days after the Date of Application unless A.I.D. has cured the default under § 204.22.

(b) *Guaranty Payment.* On or before the Guaranty Payment Date, the Applicant shall tender assignment of all Applicant's right, title and interest as of the Date of Application in and to all sums for which Application has been

made. A.I.D. shall accept the assignment and pay or cause to be paid to Applicant and compensation due to the Applicant pursuant to the Guaranty.

§ 204.22 Right of A.I.D. to cure default.

Within sixty (60) days after the Date of Application for Compensation, A.I.D. may at any time make payments to the Lender or any Assignee equal to all installments of principal due and unpaid under any Note (other than installments whose maturity has been accelerated), together with interest on the unpaid principal amount of the Note to the date of such payment by A.I.D., and any Further Guaranteed payments due and unpaid, and thereby prevent or cure any default under the Note. Upon such a payment by A.I.D., if the Lender or Assignee shall have accelerated such Note, such acceleration shall be immediately rescinded or, if such Note shall not have been accelerated, such Note shall not thereafter be accelerated as a result of such Event of Default.

§ 204.23 Payment to A.I.D. of excess amounts received by the lender of any assignee.

If the Lender or Assignee shall, as a result of A.I.D. paying compensation under this Guaranty, receive an excess payment, it shall refund the excess to A.I.D.

Subpart D—Covenants

§ 204.31 Prosecution of claims.

After an assignment to A.I.D. by the Lender or any Assignee pursuant to § 204.21(b), A.I.D. shall have exclusive power to prosecute all claims related to the outstanding Eligible Notes so assigned. If the Lender or such Assignee continues to have an interest in the outstanding Eligible Notes, the Lender or such Assignee and A.I.D. shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 204.32 Change in agreements.

Neither the Lender nor any Assignee will consent to any change or waiver of

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any provision of any document contemplated by this Guaranty without the prior written consent of A.I.D.

§ 204.33 A.I.D. approval of acceleration of notes.

Without the prior approval of A.I.D., the Lender or any Assignee shall not accelerate any Eligible Notes held by it on account of the happening of an Event of Default other than failure to make a payment when due on the note.

Subpart E—Administration

§ 204.41 Arbitration.

Any controversy or claim between A.I.D. and the Lender or any Assignee arising out of this Guaranty shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 204.42 Notice.

Any communication to A.I.D. pursuant to this Guaranty shall be in writing in the English language, shall refer to the A.I.D. Housing Guaranty Project Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by A.I.D. at the address specified below:

Mail Address:

Office of Housing and Urban Programs, Agency for International Development, Washington, DC 20523.

Re: A.I.D. Housing Guaranty Project
—HG—¹

Telex Nos.: ITT 440001 (Answer back is AIDWNDC) RCA 248379 (Answer back is 248379 AID UR) WU 892703 (Answer back is AID WSH) WU 64154 (Answer back is AID 64154)

Fax No.: 202/647-4958

Cable Address: AID WASH DC

Other addresses may be substituted for the above upon the giving of notice of such substitution to each Lender or As-

¹Enter title and numerical designation of the relevant A.I.D. Housing Guaranty Project as inscribed on each Note guaranty legend.

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signee by first class mail at the addresses set forth in the Note Register.

§ 204.43 Governing law.

This Guaranty shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

EXHIBIT A TO PART 204—APPLICATION FOR COMPENSATION

Office of Housing and Urban Programs,
Agency for International Development,
International Development Cooperation
Agency, Washington, DC 20523

Ref: Guaranty dated as of ____, 19__:

A.I.D. Housing Project HG—____

Gentlemen:

You are hereby advised that payment of \$____ (consisting of \$____ of principal, \$____ of interest and \$____ in Further Guaranteed Payments as defined in Section 204.01(i) of the Standard Terms and Conditions of the above-mentioned Guaranty¹) was due on ____, 19__, on \$____ principal amount of Notes held by the undersigned of the ____ (the “Borrower”), issued pursuant to the Loan Agreement, dated as of ____, ____, between the Borrower and _____. Of such amount \$____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guaranty, the undersigned hereby applies, under Section 204.21 of said Guaranty, for payment of a total of \$____, representing \$____, the outstanding principal amount of the presently outstanding Notes of the Borrower held by the undersigned issued pursuant to said Loan Agreement, and \$____ in Further Guaranteed Payments,² plus accrued and unpaid interest thereon to and including the date payment in full is made by you pursuant to said Guaranty. Such payment is to be made at your office in Washington, DC.

[Name of Applicant]

By _____

Name _____

Title _____

Dated _____

¹Strike inapplicable portion.

²In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

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EXHIBIT B TO PART 204—ASSIGNMENT

The undersigned, being the registered owner of a Note in the principal amount of \$ _____ issued by the _____ (the “Borrower”), pursuant _____, and guaranty, dated as of _____, the “Guaranty”), between the Lender and the United States of America, acting through the Agency for International Development (“A.I.D.”), hereby assigns to A.I.D., without recourse (i) its entire right, title and interest in and to the Note of the Borrower referred to above (which Note is attached hereto), including its rights to unpaid interest on such Note, and (ii) its entire outstanding right, title and interest arising out of said Loan Agreement with respect to such Note, except the undersigned’s right to receive payments under the Loan Agreement in respect of which A.I.D. has made no payment to the undersigned as of the date hereof.

[Name of Applicant]

By _____

Name _____

Title _____

Dated _____

Accepted:

UNITED STATES OF AMERICA

By _____

Name _____

Title _____

Dated _____

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

AUTHORITY: 22 U.S.C. 2381(a).

§ 205.1 Grants and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other organization to participate in any USAID program for which they are otherwise eligible. In the selection of service providers, neither USAID nor entities that make and administer sub-awards of USAID funds shall discriminate for or against an organization on the basis of the organization’s religious character or affiliation. As used in this section, the term “program” refers to Federally funded USAID grants and cooperative agreements, including sub-grants and sub-agreements. The term also includes grants awarded under contracts that have been awarded by USAID for the purpose of administering grant pro-

grams. As used in this section, the term “grantee” includes a recipient of a grant or a signatory to a cooperative agreement, as well as sub-recipients of USAID assistance under grants, cooperative agreements and contracts.

(b) Organizations that receive direct financial assistance from USAID under any USAID program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with direct financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. These restrictions on inherently religious activities do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in USAID-funded programs or services will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a religious organization that receives financial assistance from USAID may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization’s name, select its board members on a religious basis, and include religious references in its organization’s mission